

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF CALIFORNIA

LYCURGAN, INC. d/b/a ARES
ARMOR,

Plaintiff-Petitioner,

v.

B. TODD JONES, in his official capacity
as Head of the San Diego Bureau of
Alcohol, Tobacco, Firearms and
Explosives; and DOES 1–10,

Defendant-Respondent.

Case No.: 14-CV-1679 JLS (BGS)

**ORDER: (1) GRANTING
DEFENDANT'S MOTION TO
DISMISS, AND
(2) DISMISSING WITH PREJUDICE
PLAINTIFF'S AMENDED
COMPLAINT**

(ECF No. 39)

Presently before the Court is Defendant-Respondent B. Todd Jones' Motion to Dismiss Amended Complaint. ("MTD," ECF No. 39.) Also before the Court are Plaintiff-Petitioner Lycurgan, Inc.'s Opposition to (ECF No. 51) and Defendant's Reply in Support of (ECF No. 52) the MTD. The Court vacated the hearing scheduled for January 7, 2016, and took the matter under submission without oral argument pursuant to Civil Local Rule 7.1(d)(1). (ECF No. 53.) Having considered the parties' arguments and the law, the Court **GRANTS** Defendant's MTD.

BACKGROUND

On March 15, 2014, agents from the Bureau of Alcohol, Tobacco, Firearms and Explosives ("ATF") executed a search warrant issued in the Southern District of California

1 at Plaintiff's business located at 180 Roymar Street, Oceanside, California, and seized
 2 "5,804 unfinished polymer parts otherwise known as 'unfinished polymer lower
 3 receivers.'" (First Am. Compl. ("FAC") ¶¶ 7–8, ECF No. 34.) Plaintiff contends that these
 4 lower receivers are not contraband. (*Id.* at ¶ 10.)

5 On March 27, 2014, the ATF sent Plaintiff a Notice of Seizure and Administrative
 6 Forfeiture Proceeding. (*Id.* at ¶ 11; FAC Ex. A, ECF No. 34-1.) On April 5, 2014, Plaintiff
 7 submitted a Verified Claim for the lower receivers. (FAC ¶ 13, ECF No. 34; FAC Ex. B,
 8 ECF No. 34-2.) On July 3, 2013, the ATF informed Plaintiff that the ATF was no longer
 9 pursuing civil forfeiture proceedings, but that the United States Department of Justice
 10 would continue to hold the lower receivers "as evidence in its ongoing criminal
 11 investigation." (FAC ¶ 14, ECF No. 34; FAC Ex. D, ECF No. 34-4.) On July 9, 2014,
 12 Plaintiff requested in writing that the Assistant United States Attorney release Plaintiff's
 13 property. (FAC ¶ 15, ECF No. 34.)

14 Believing that "Defendant's time to initiate forfeiture proceedings ha[d] *lapsed*
 15 pursuant to 18 U.S.C. [§] 983(a)(3)(A)" and 18 U.S.C. § 983(a)(3)(B) (*id.* at ¶¶ 17–18
 16 (emphasis in original)), Plaintiff filed a complaint seeking return of the lower receivers
 17 pursuant to the Civil Asset Forfeiture Reform Act of 2000, Pub. L. No. 106-185, 114 Stat.
 18 202 ("CAFRA"), on July 16, 2014 (ECF No. 1).

19 On September 22, 2014, Defendant filed a motion to dismiss Plaintiff's initial
 20 complaint on the grounds that the lower receivers "were not seized in a 'nonjudicial
 21 forfeiture proceeding'" under 18 U.S.C. § 983(a)(2)(A), necessitating dismissal pursuant
 22 to Federal Rules of Civil Procedure 12(b)(1) and 12(b)(6). (*See* ECF No. 7-1 at 4–5.¹) On
 23 December 17, 2014, the Court granted Defendant's first motion to dismiss and dismissed
 24 without prejudice Plaintiff's complaint pursuant to Rule 12(b)(1), finding that the Court's
 25 jurisdiction over the forfeiture action was divested when the government voluntarily
 26

27
 28 ¹ For ease of reference, all citations to docketed materials refer to the CM/ECF numbers stamped at the
 top of the page.

1 dismissed the forfeiture action. (ECF No. 19 at 6–7.)

2 Subsequently, on December 23, 2104, the ATF returned 5,786 lower receivers to
 3 Plaintiff. (FAC ¶ 19, ECF No. 34.) On January 14, 2015, maintaining that the ATF had
 4 “retained 18 of [Plaintiff]’s unfinished polymer lower receives without explanation” (ECF
 5 No. 21 at 8), Plaintiff filed a motion for new trial pursuant to Fed. R. Civ. P. 59(a) rather
 6 than filing an amended complaint. On February 9, 2015, Plaintiff also appealed the
 7 December 17, 2014 dismissal of its case to the United States Court of Appeals for the Ninth
 8 Circuit. (ECF No. 24.)

9 On June 11, 2015, the Court denied Plaintiff’s motion for new trial on the grounds
 10 that there had been no trial, but granted Plaintiff leave to file an amended complaint. (ECF
 11 No. 33 at 4.) Plaintiff filed its FAC on July 1, 2015 (ECF No. 34) and its amended notice
 12 of appeal on July 12, 2015 (ECF No. 37).

13 On August 5, 2015, Defendant filed the instant MTD. (ECF No. 39.) The Court
 14 granted a number of extensions of time pending the Ninth Circuit’s resolution of Plaintiff’s
 15 appeal. (See, e.g., ECF Nos. 43, 45, 47.) On November 18, 2015, the Ninth Circuit
 16 dismissed Plaintiff’s appeal for lack of jurisdiction, concluding that the Court’s December
 17 17, 2014 Order was “not intended to be a final and appealable order.” (ECF No. 48.)

18 **LEGAL STANDARD**

19 Federal courts are courts of limited jurisdiction, and as such have an obligation to
 20 dismiss claims for which they lack subject-matter jurisdiction. *Demarest v. United States*,
 21 718 F.2d 964, 965 (9th Cir. 1983). “[T]he district court ha[s] a duty to establish subject
 22 matter jurisdiction . . . *sua sponte*, whether the parties raise[] the issue or not,” *United*
 23 *Investors Life Ins. Co. v. Waddell & Reed Inc.*, 360 F.3d 960, 967 (9th Cir. 2004) (citing
 24 *Feidt v. Owens Corning Fiberglas Corp.*, 153 F.3d 124, 128 (3d Cir. 1998)), and, “[i]f the
 25 court determines at any time that it lacks subject-matter jurisdiction, the court must dismiss
 26 the action,” Fed. R. Civ. P. 12(h)(3). “The party asserting jurisdiction bears the burden of
 27 establishing subject matter jurisdiction on a motion to dismiss for lack of subject matter
 28 jurisdiction.” *In re Dynamic Random Access Memory (DRAM) Antitrust Litig.*, 546 F.3d

1 981, 984 (9th Cir. 2008) (citing *Kokkonen v. Guardian Life Ins. Co. of Am.*, 511 U.S. 375,
 2 377 (1994); *Stock W., Inc. v. Confederated Tribes of the Colville Reservation*, 873 F.2d
 3 1221, 1225 (9th Cir. 1989)). “Dismissal for lack of subject matter jurisdiction is
 4 appropriate if the complaint, considered in its entirety, on its face fails to allege facts
 5 sufficient to establish subject matter jurisdiction.” *Id.* (citing *Love v. United States*, 915
 6 F.2d 1242, 1245 (9th Cir. 1990)).

7 Rule 12(b)(1) motions may challenge jurisdiction facially or factually. *Safe Air for*
 8 *Everyone v. Meyer*, 373 F.3d 1035, 1039 (9th Cir. 2004). A facial attack is one where “the
 9 challenger asserts that the allegations contained in a complaint are insufficient on their face
 10 to invoke federal jurisdiction.” *Id.* In evaluating such a challenge, the court accepts
 11 the factual allegations in the complaint as true. *See Miranda v. Reno*, 238 F.3d 1156, 1157
 12 n.1 (9th Cir. 2001). In contrast, where the defendant challenges the factual basis underlying
 13 the allegations, the court need not accept the allegations as true and may instead
 14 make factual determinations. *White v. Lee*, 227 F.3d 1214, 1242 (9th Cir. 2000). “In ruling
 15 on a challenge to subject matter jurisdiction, the district court is ordinarily free to hear
 16 evidence regarding jurisdiction and to rule on that issue prior to trial,
 17 resolving factual disputes where necessary.” *Augustine v. United States*, 704 F.2d 1074,
 18 1077 (9th Cir. 1983) (citing *Thornhill Publ’g Co. v. Gen. Tel. Corp.*, 594 F.2d 730, 733
 19 (9th Cir. 1979)). When making such a ruling, the district court may review evidence
 20 beyond the complaint without converting the motion to dismiss into a motion for summary
 21 judgment. *Savage v. Glendale Union High Sch.*, 343 F.3d 1036, 1039 n.2 (9th Cir.
 22 2003) (citing *White*, 227 F.3d at 1242).

23 ANALYSIS

24 Plaintiff’s FAC asserts four claims for relief: (1) return of property pursuant to 18
 25 U.S.C. § 983, (2) return of property pursuant to Fed. R. Crim. P. 41(e),² (3) return of

27 _____
 28 ² Although Plaintiff brings its second claim for relief under Fed. R. Crim. P. 41(e) (FAC ¶¶ 29–35), it is
 clear that Plaintiff intended to cite current Fed. R. Crim. P. 41(g) (see, e.g., MTD Mem. 4 & n.1, ECF No.
 39-1; *see also United States v. Kama*, 394 F.3d 1236, 1238 n.1 (9th Cir. 2005) (noting that, since the 2002

1 property pursuant to the Fourth Amendment, and (4) return of property pursuant to the
 2 Fifth Amendment. (*See generally* ECF No. 34.)

3 Defendant moves to dismiss Plaintiff's FAC pursuant to Federal Rules of Civil
 4 Procedure 12(b)(1) and 12(b)(6). (*See generally* ECF No. 39.) Specifically, Defendant
 5 argues that the ATF's return of all lower receivers in its possession moots Plaintiff's
 6 amended complaint and divests this Court of jurisdiction (MTD Mem. 7–8, ECF No. 39-
 7 1) and that CAFRA does not provide a jurisdictional basis for the return of Plaintiff's lower
 8 receivers (*id.* at 8–9).³

9 In light of Defendant's challenge, the Court addresses its subject-matter jurisdiction
 10 over each of Plaintiff's claims for relief in turn.

11 **I. CAFRA**

12 Plaintiff's first claim for relief is brought under 18 U.S.C. § 983 ("Section 983"), a
 13 provision of CAFRA. Under Section 983(f), a claimant may request the immediate release
 14 of the seized property by filing a petition that sets forth "the basis on which the
 15 requirements" for release are met. 18 U.S.C. § 983(f)(3)(B)(i). "The burden is on Claimant
 16 to prove that [it] has satisfied all the requirements of 18 U.S.C. § 983(f)." *United States v.*
 17 *2005 Mercedes Benz E500*, 847 F. Supp. 2d 1211, 1214 (E.D. Cal. 2012) (citing *United*
 18 *States v. Undetermined Amount of U.S. Currency*, 376 F.3d 260, 264 (4th Cir. 2004)); *see*
 19 *also United States v. Value of Certain E-Metal Accounts at E-Gold Ltd.*, No. ELH-11-
 20 01530, 2013 WL 5664678, at *2 (D. Md. Oct. 17, 2013) ("[I]f a claimant fails to establish
 21 any one of the five criteria, its motion for the release of property must be denied.") (citing
 22 *Undetermined Amount of U.S. Currency*, 376 F.3d at 264). A court is authorized to release
 23 the property only if the claimant proves that:

24
 25 _____
 26 amendments to the Federal Rules of Criminal Procedure, "[m]otions to return property are . . . relegated
 27 to Rule 41(g)").

28 ³ Although Defendant originally argued that Plaintiff's notice of appeal divested this Court of jurisdiction
 over Plaintiff's case (MTD Mem. 5–6, ECF No. 39-1), Defendant has since conceded that the Ninth
 Circuit's dismissal of Plaintiff's appeal mooted this argument (*see* Reply 2, ECF No. 52).

- 1 (A) the claimant has a possessory interest in the property;
- 2 (B) the claimant has sufficient ties to the community to provide
- 3 assurance that the property will be available at the time of the
- 4 trial;
- 5 (C) the continued possession by the Government pending the
- 6 final disposition of forfeiture proceedings will cause substantial
- 7 hardship to the claimant, such as preventing the functioning of a
- 8 business, preventing an individual from working, or leaving an
- 9 individual homeless;
- 10 (D) the claimant's likely hardship from the continued possession
- 11 by the Government of the seized property outweighs the risk that
- 12 the property will be destroyed, damaged, lost, concealed, or
- 13 transferred if it is returned to the claimant during the pendency
- 14 of the proceeding; and
- 15 (E) none of the conditions set forth in paragraph (8) applies.

18 U.S.C. § 983(f)(1)(A)–(E). Paragraph (8) states that the property in question should not be released if it:

- 16 (A) is contraband, currency, or other monetary instrument, or
- 17 electronic funds unless such currency or other monetary
- 18 instrument or electronic funds constitutes the assets of a
- 19 legitimate business which has been seized;
- 20 (B) is to be used as evidence of a violation of the law;
- 21 (C) by reason of design or other characteristic, is particularly
- 22 suited for use in illegal activities; or
- 23 (D) is likely to be used to commit additional criminal acts if
- 24 returned to the claimant.

18 U.S.C. § 983(f)(8).

26 “[T]he doctrine of sovereign immunity . . . ‘is an important limitation on the subject

27 matter jurisdiction of federal courts.’” *Dunn & Black, P.S. v. United States*, 492 F.3d 1084,

28 1087 (9th Cir. 2007) (quoting *Vacek v. U.S. Postal Serv.*, 447 F.3d 1248, 1250 (9th Cir.

1 2006)). As a sovereign, the United States “is immune from suit unless it has expressly
 2 waived such immunity and consented to be sued.” *Dunn & Black*, 492 F.3d at 1087–
 3 88 (quoting *Gilbert v. DaGrossa*, 756 F.2d 1455, 1458 (9th Cir. 1985)). A plaintiff bears
 4 the burden of showing that the United States has waived its sovereign immunity. *Cato v.*
 5 *United States*, 70 F.3d 1103, 1107 (9th Cir. 1995) (citing *Baker v. United States*, 817 F.2d
 6 560, 562 (9th Cir. 1987)). Consequently, a plaintiff seeking the immediate release of seized
 7 property pursuant to Section 983(f) must demonstrate that all of the Section 983(f)(1)
 8 requirements have been met in order to establish that the United States has waived its
 9 sovereign immunity. *See, e.g., Harris v. U.S. Dep’t of Homeland Sec.*, No. CA 7:12-3291-
 10 GRA-JDA, 2013 WL 1194755, at *5 (D.S.C. Feb. 26, 2013) (citing *Williams v. United*
 11 *States*, 50 F.3d 299, 304 (4th Cir. 1995)), *adopted* 2013 WL 1194846 (D.S.C. Mar. 22,
 12 2013); *see also In re \$22,420.00 in U.S. Currency*, No. 4:08-CV-12-F, 2008 WL 1969209,
 13 at *1–2 (E.D.N.C. May 5, 2008).

14 Plaintiff claims that it “is entitled to the immediate release of the subject property,
 15 pursuant to 18 U.S.C. § 983(f)(1).” (FAC ¶ 23, ECF No. 34.) Plaintiff contends that it has
 16 met the Section 983(f)(1) factors because it:

17 (A) owns the seized property, (B) has sufficient ties to the
 18 community to provide assurance that the property will be
 19 available at the time of the trial, (C) has been and will continue
 20 to suffer substantial hardship and financial loss if the
 21 Government continues to retain its property, and (D) this
 22 hardship outweighs the risk that the seized property will be lost
 23 because the Government has already had more than a year to
 24 examine the property, and lastly (E) the seized property is not
 25 contraband.

26 (Id. at ¶ 24.)

27 The Court finds that Plaintiff has failed to demonstrate that it satisfies all of the
 28 Section 983(f)(1) factors and, consequently, that the United States has not waived
 sovereign immunity. Specifically, the Court finds that Plaintiff has not—and cannot—
 demonstrate under Section 983(f)(1)(C) that it will suffer “substantial hardship” if the

1 Court declines to order the United States to return the 18 unaccounted-for lower receivers.
 2 Section 983 provides various examples of substantial hardship, “such as preventing the
 3 functioning of a business, preventing an individual from working, or leaving an individual
 4 homeless.” 18 U.S.C. § 983(f)(1)(C). “The[se] examples of substantial hardship . . .
 5 ‘indicate a clear legislative intent that the hardship experienced go beyond mere
 6 inconvenience to the claimant.’” *United States v. 2003 Mercedes Benz E55 AMG*, No.
 7 2:13-CV-01274-GEB, 2013 WL 5153239, at *1 (E.D. Cal. Sept. 12, 2013) (quoting *2005*
 8 *Mercedes Benz E500*, 847 F. Supp. 2d at 1216).

9 The parties do not dispute that the ATF has already returned 5,786 lower receivers
 10 to Plaintiff. (See FAC ¶ 20, ECF No. 34.) Even assuming that the ATF possesses the 18
 11 unaccounted-for lower receivers, Plaintiff does not explain how the ATF’s retention of less
 12 than a half of a percent of the receivers confiscated—worth less than \$1,000 (see FAC Ex.
 13 A, ECF No. 34-1 (valuing 5,804 lower receivers at \$290,200))—constitutes an undue
 14 hardship, especially in light of the ATF’s letter informing Plaintiff that, in its opinion, the
 15 returned lower receivers were unsaleable.⁴ In short, Plaintiff has not and cannot show that
 16 the 18 unaccounted-for lower receivers “prevent[] the functioning of [Plaintiff’s]
 17 business.” See 18 U.S.C. § 983(f)(1)(C); see also *In re Petition of Moran*, No. 09CV248-
 18 MMA(CAB), 2009 WL 650281, at *3 (S.D. Cal. Mar. 10, 2009) (finding no substantial
 19 hardship where claimant and others in his family “continue[] to work” despite the Drug
 20 Enforcement Administration’s retention of claimant’s seized vehicle).

21 // /

22 // /

23
 24
 25 ⁴ See FAC Ex. E, ECF No. 34-5 (“ATF has classified the ‘EP-80’ lower firearm receiver manufactured
 26 by EP Arms, LLC, as a firearm for purposes of the [Gun Control Act of 1968]. . . . [ATF] is returning
 27 those firearms to Ares Armor. This letter serves to advise you that all Federal and State firearms
 28 laws apply to the subject EP-80 lower firearm receivers. If you plan to engage in the business of
 dealing firearms, the GCA requires you to obtain a Federal firearms license. . . . Our examination of these
 firearms also reveals that they were never properly marked by the manufacturer That deficiency
 must be corrected by the manufacturer before they may be sold.”) (emphasis in original).

1 Because the Court lacks subject-matter jurisdiction, the Court **DISMISSES**
 2 Plaintiff's CAFRA claim for relief.⁵

3 **II. Equitable Claims**

4 Plaintiff's second through fourth claims for relief "invoke[] the equitable authority
 5 of this [C]ourt" under Federal Rule of Criminal Procedure 41(g) and the Fourth and Fifth
 6 Amendments, respectively. (*See* FAC ¶¶ 30, 38, 41, ECF No. 34; *see also Kama*, 394 F.3d
 7 at 1238 (noting that Fed. R. Crim. P. 41(g) motions brought when there are no criminal
 8 proceedings pending against the movant "are treated as civil equitable proceedings").)
 9 Assuming, without deciding, that Plaintiff's request for an order compelling Defendant to
 10 return Plaintiff's property is not mooted (*see* MTD Mem. 7–8, ECF No. 39-1), the Court
 11 must satisfy itself that it should exercise its equitable jurisdiction to hear this case. *See*
 12 *Kardoh v. United States*, 572 F.3d 697, 700 (9th Cir. 2009) ("Where no criminal proceeding
 13 is pending, a district court has discretion to hear a motion for the return of property as a
 14 civil equitable proceeding.") (citing *Kama*, 394 F.3d at 1238).

15 "[A] district court must exercise caution and restraint before assuming jurisdiction."
 16 *Kama*, 394 F.3d at 1238 (quoting *Ramsden v. United States*, 2 F.3d 322, 324 (9th Cir.
 17 1993)) (internal quotation marks omitted). In determining whether to exercise its equitable
 18 jurisdiction, the Court considers "[f]our stringent factors." *In re Chandler*, 270 F.R.D. 576,
 19 578 (S.D. Cal. 2010). The Court must therefore decide whether: (1) the Government
 20 displayed a callous disregard for Plaintiff's constitutional rights; (2) Plaintiff has an
 21 individual interest in and need for the property it wants returned; (3) Plaintiff would be
 22 irreparably injured by denying return of the property; and (4) Plaintiff has an adequate
 23 remedy at law for the redress of his grievance. *Kama*, 394 F.3d at 1238 (quoting *Ramsden*,
 24 2 F.3d at 324–25). "If the 'balance of equities tilts in favor of reaching the merits' of the

25
 26
 27 ⁵ To the extent Plaintiff's CAFRA claim for relief is premised upon Section 983(a)(3) (*see, e.g.*, FAC ¶ 17,
 28 ECF No. 34 (noting that Defendant failed to timely initiate forfeiture proceedings pursuant to Section
 983(a)(3)(A))), that provision "does not contain an implied right of action," *Diamond Casino Cruise, LLC*
v. Dep't of Homeland Sec., 915 F. Supp. 2d 1380, 1386 (S.D. Ga. 2013).

1 Rule 41(g) motion, the district court should exercise its equitable jurisdiction to entertain
 2 the motion.” *Id. (quoting Ramsden*, 2 F.3d at 326). “The court must consider these factors
 3 as a preliminary matter before assuming jurisdiction and determining the motion on the
 4 merits.” *In re Prop. Seized from 1015 E. Cliff Drive*, No. 13-MC-80172-JST, 2013 WL
 5 5568300, at *2 (N.D. Cal. Oct. 9, 2013).

6 Upon consideration of these factors, the Court determines that the balance of equities
 7 does not support the Court’s exercise of equitable jurisdiction. With respect to the first
 8 factor, Plaintiff “must establish that the government’s conduct was ‘sufficiently
 9 reprehensible’ to warrant the return of [its] property,” *Cox v. United States*, No. CV 07-
 10 1200-PHX-SMM, 2008 WL 477877, at *1 (D. Ariz. Feb. 19, 2008), a burden Plaintiff fails
 11 to carry. Plaintiff does not dispute that the ATF seized the lower receivers pursuant to a
 12 warrant. (See FAC ¶ 7, ECF No. 34.) Plaintiff also does not allege that the manner in
 13 which the warrant was executed was unreasonable. *See, e.g., Cox*, 2008 WL 477877, at *4
 14 (noting that “the manner in which warrants are executed is also subject to
 15 a reasonableness review”) (citing *Dalia v. United States*, 441 U.S. 238, 258 (1979); *United*
 16 *States v. Ankeny*, 490 F.3d 744, 751 (9th Cir. 2007)). Consequently, the Government did
 17 not act with callous disregard of Plaintiff’s constitutional rights when it initially seized
 18 Plaintiff’s lower receivers. *See, e.g., Chandler*, 270 F.R.D. at 579 (“[T]he government has
 19 not acted with ‘callous disregard’ of the constitutional rights of movants, as the government
 20 seized the property pursuant to a warrant issued by a neutral fact finder.”) (citing *Account*
 21 *Servs. Corp. v. United States*, No. 09 CV 1495 JM (RBB), 2009 WL 2755649, at *3 (S.D.
 22 Cal. Aug. 27, 2009)); *Zubkis v. Lange*, 966 F. Supp. 985, 987 (S.D. Cal. 1997) (“Plaintiff
 23 has not established a *callous disregard* for his constitutional rights. . . . [T]he Government
 24 obtained a facially valid warrant supported by the necessary affidavits. Nor did any of the
 25 conduct of the Government agents in executing the warrant appear to violate Plaintiff’s
 26 constitutional rights.”) (emphasis in original), *aff’d* 133 F. 3d 931 (9th Cir. 1998).

27 Plaintiff also fails to demonstrate a callous disregard of Plaintiff’s constitutional
 28 rights based on the alleged continued retention of the 18 unaccounted-for lower receivers.

1 *See, e.g., 1015 E. Cliff Drive*, 2013 WL 5568300, at *2 & n.1 (noting that “Rule 41(g)
 2 grants standing both to those aggrieved by an ‘unlawful search and seizure’ as well as those
 3 aggrieved only by a ‘deprivation of property’” and, “even if the initial search respected the
 4 Movant’s constitutional rights, a continuing unjustified retention of the material would
 5 not”) (citing Fed. R. Crim P. 41(g); *In re Singh*, 892 F. Supp. 1, 3 (D.D.C. 1995)).
 6 Defendant has returned 5,786 lower receivers. (*See* FAC ¶ 20, ECF No. 34.) Although 18
 7 receivers are unaccounted for, this failure is hardly evidence of a “callous disregard” for
 8 Plaintiff’s constitutional rights. Consequently, the first factor weighs in favor of the
 9 Government.

10 “*The second factor appears to be neutral as [Plaintiff] ha[s an] individual interest[]*
 11 *in the property seized, but there is no evidence that [it] need[s] to have the property returned*
 12 *at this time.*” *In re Seizure of Private Funds*, No. MC09-00100HG-KSC, 2009 WL
 13 2700213, at *3 (D. Haw. June 19, 2009), *adopted* 2009 WL 2700211 (D. Haw. Aug. 26,
 14 2009).

15 The third and fourth factors also weigh in favor of the Government. Plaintiff will
 16 not be irreparably harmed by denial of the return of the 18 unaccounted-for lower receivers
 17 because “economic injury alone generally ‘does not support a finding of irreparable harm,
 18 because such injury can be remedied by a damage award.’” *Account Servs. Corp.*, 2009
 19 WL 2755649, at *3 (quoting *Rent-A-Ctr., Inc. v. Canyon Television & Appliance Rental,*
 20 *Inc.*, 944 F.2d 597, 603 (9th Cir. 1991)); *see also supra* Part I (finding that Plaintiff cannot
 21 establish “substantial hardship”). For the same reason, an adequate remedy at law exists
 22 because Plaintiff may always file a civil suit for damages. *See, e.g., Seizure of Private*
 23 *Funds*, 2009 WL 2700213, at *3 (concluding that “an adequate remedy at law for redress
 24 does exist” because “if the Government does not indict [petitioners] and fails to return their
 25 property or damages the property in some manner, they can file a civil lawsuit”); *In re*
 26 *Seizure of a Light Green 2009 Toyota Prius 4 Door Sedan*, No. MC 09-00101JMS/BMK,
 27 2009 WL 2143542, at *4 (D. Haw. July 14, 2009) (same).

28 ///

1 The Court therefore finds that these factors weigh on balance in favor of the
 2 Government and declines to exercise its equitable jurisdiction over Plaintiff's second
 3 through fourth claims for relief. Accordingly, the Court **GRANTS** Defendant's MTD and
 4 **DISMISSES** Plaintiff's equitable claims for lack of subject-matter jurisdiction.

5 **III. Dismissal With Prejudice**

6 Generally, a dismissal for lack of subject-matter jurisdiction should be without
 7 prejudice because it is not an adjudication on the merits and a plaintiff should be afforded
 8 the opportunity to reassert her claims in a competent court. *See Siler v. Dillingham Ship*
 9 *Repair*, 288 Fed. App'x 400, 401 (9th Cir. 2008) (citing *Freeman v. Oak Unified Sch. Dist.*,
 10 179 F.3d 846, 847 (9th Cir. 1999)); *see also Kendall v. Dep't of Veterans Affairs*, 360 Fed.
 11 App'x 902, 903 (9th Cir. 2009) (citing *Kelly v. Fleetwood Enters., Inc.*, 377 F.3d 1034,
 12 1036 (9th Cir. 2004)). Moreover, "a district court should grant leave to amend even if no
 13 request to amend the pleading was made, unless it determines that the pleading could not
 14 possibly be cured by the allegation of other facts." *Lopez v. Smith*, 203 F.3d 1122, 1127
 15 (9th Cir. 2000) (quoting *Doe v. United States*, 58 F.3d 494, 497 (9th Cir. 1995)) (internal
 16 quotation marks omitted) (citing *Cook, Perkiss & Liehe, Inc. v. N. Cal. Collection Serv., Inc.*, 911 F.2d 242 (9th Cir. 1990); *Balistreri v. Pacifica Police Dep't*, 901 F.2d 696 (9th
 17 Cir. 1990); *Noll v. Carlson*, 809 F.2d 1446 (9th Cir. 1987); *Bonanno v. Thomas*, 309 F.2d
 18 320 (9th Cir. 1962); *Sidebotham v. Robison*, 216 F.2d 816 (9th Cir. 1954)).

20 Here, the Court finds that amendment would be futile. Plaintiff cannot demonstrate
 21 that the possible retention of the 18 unaccounted-for lower receivers constitutes either
 22 "substantial hardship" as required under Section 983(f)(1)(C) or irreparable harm as
 23 required for this Court to exercise its equitable jurisdiction. *See supra* Parts I, II.
 24 Consequently, the Court **DISMISSES WITH PREJUDICE** Plaintiff's FAC for lack of
 25 subject-matter jurisdiction.

26 ///

27 ///

28 ///

CONCLUSION

In light of the foregoing, the Court **GRANTS** Defendant's MTD (ECF No. 39) and **DISMISSES WITH PREJUDICE** Plaintiff's FAC (ECF No. 34). The Clerk of the Court shall close the file.

IT IS SO ORDERED.

Dated: January 27, 2016

Janis L. Sammartino
Hon. Janis L. Sammartino
United States District Judge